IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

MFA.No. 1241 of 2001(A)

OPMV.997/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TRIVANDRUM

.....

APPELLANT:

SIVAPRASAD (MINOR) REPRESENTED
BY HIS FATHER SREEDHARAN, T.C. 41/421
THACHAKUDI VILAKATHU VEEDU, SREEVAS
KURIATHY, MANACAUD P.O, TRIVANDRUM

BY ADV. SRI.SASTHAMANGALAM S. AJITHKUMAR
SRI.S. SREEKUMAR
SMT.P.ASHA

RESPONDENTS:

MANAGING DIRECTOR, K.S.R.T.C. CHIEF
OFFICER, TRANSPORT BHAVAN,
FORT , THIRUVANANTHAPURAM

BY ADV. SRI.K.PRABHAKARAN SC KSRTC

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 18-06-2007 THE COURT ON 18/06/2007 DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR . J.

M.F.A. 1241 of 2001

Dated this the 18th day of June 2007

JUDGMENT

A minor represented by his father who filed an Original petition claiming compensation, is the appellant. This appeal is filed against an award passed by the Motor Accidents Claims Tribunal, Thiruvananthapuram, dismissing an original petition filed by the appellant. The appellant filed the Original petition claiming compensation for the injuries sustained by him in the road traffic accident. It was alleged that on 29-7-1994 at 11.30 a.m, the petitioner was getting down from a K.S.R.T.C bus bearing Reg No. S.998 at the Bus Stand in front of the Music College, Thycaud, Thiruvananthapuram. The driver of the bus all of a sudden drove the bus rashly or negligently as a result of which the petitioner was thrown out on the road and sustained injuries. It was averred that the accident occurred due to the negligence of the conductor as well as the driver of the bus. The Tribunal took a view that the rights and liabilities of the parties cannot be determined without the conductor on the party array and dismissed the original petition. Challenging that award this appeal is filed.

The learned counsel for the appellant has argued that if the Tribunal was of the opinion that the conductor was a necessary party, the

appellant should have been afforded an opportunity to implead him. The Tribunal did not consider whether an award can be passed without the conductor on the party array. No reason was stated why the conductor is a necessary party. The Tribunal failed to note that the application was filed by a minor represented by his father and the name and address of the conductor can be supplied only by the respondent Corporation. So the dismissal of the application for the non- impleadment, of the conductor of the bus is illegal and unsustainable. The Tribunal has not considered the quantum of compensation. I have no other option but to set aside the impugned award and remand the case for fresh disposal in accordance with law.

In the result this M.F.A. is allowed. The award passed by the Tribunal dismissing the O.P (MV) 997/1995 dated 18-8-2000 is hereby set aside . The case is remanded to the Tribunal for fresh disposal. The Tribunal is directed to take O.P(MV) 997/1995 back to file and dispose of the same afresh in accordance with law after giving an opportunity to the parties to amend the pleadings and to adduce evidence if so advised. The parties shall appear before the court below on 23rd July 2007.

K.PADMANABHAN NAIR,JUDGE

es